



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2012-78
Date: October 11, 2012
Recommendation: Conditional Approval

PLANNING STAFF REPORT

Site: 263 Elm Street, a/k/a 5 Davis Square

Applicant Name: NE Frog Pond LLC
Applicant Address: 715 Boylston Street, 2nd Floor, Boston, MA 02116
Property Owner Name: The 5 Davis Square, LLC
Property Owner Address: c/o Dreyfus Realty, 1259 Broadway, Somerville, MA 02144
Agent Name: Adam Dash, Esq.
Agent Address: Adam Dash & Associates, 48 Grove Street, Suite 304, Somerville, MA 02144
Alderman: Rebekah Gewirtz

Legal Notice: Owner, The 5 Davis Square, LLC, and Applicant, NE Frog Pond LLC, seek a Special Permit with Design Review under SZO §7.11.10.2.1.a to establish a fast order food establishment (frozen yogurt parlor), a Special Permit under SZO §4.4.1 to modify the existing storefront, including window openings, and a Special Permit under SZO §9.13.a for relief from parking requirements. CBD Zone. Ward 6.

Zoning District/Ward: CBD / 6

Zoning Approval Sought: Special Permit with Design Review (SZO §7.11.10.2.1.a); Special Permits (SZO §4.4.1 and §9.13.a)

Date of Application: September 18, 2012

Dates of Public Hearing: Zoning Board of Appeals – **Wednesday, October 17, 2012**

I. PROJECT DESCRIPTION

1. Subject Property: Located in Davis Square, at the intersection of Highland Avenue and Elm Street, the subject property is an 11,260 square foot parcel with a three-story masonry structure. The building is mixed use with a net floor area of 23,072 square feet and a gross floor area of 10,125 square



feet. Several commercial storefronts are located on the ground floor and residential units compose the second and third stories. The building is located in a Central Business District with 256 feet of street frontage. There is no parking associated with this building.

There has been no prior zoning relief for this particular commercial storefront.

2. Proposal: The Applicant, NE Frog Pond LLC, proposes to convert an existing commercial space, previously used as an insurance office, into a frozen yogurt parlor called Pinkberry. The commercial space has a gross floor area of 2,078 square feet and a net floor area of 1,780 square feet with less than 20 feet of street frontage. Renovations to the storefront will include the installation of operable café windows to the right of the door with two decorative metal panels below, bullnose lintels above the windows and doors, and façade of smooth stone veneer. The existing ADA accessible entry will be refurbished as well as the apartment entry at the left end. Existing HVAC equipment, located at the rear of the unit above the single story roof, will be demolished and replaced in a location further back from the edge of the building, but still above the single story roof. Screening of the equipment will include vertical wood slats approximately 3” apart.

The interior of this commercial space will be outfitted with a seating area for 15 patrons which includes bar seating and a trash station, a service area, two bathrooms, and a back of house or preparation area with a rear egress and storage. Up to four employees will be present at a time and hours of operation are Sunday through Thursday, 8 a.m. to 11 p.m., and Friday and Saturday, 8 a.m. to midnight. There is no parking associated with this commercial space, nor with any other unit in this building.

Signage for Pinkberry will include a 1”x 1” green aluminum trellis with the Pinkberry logo and a double face blade sign for a total of 49 square feet. The standard 24” Pinkberry logo will be internally illuminated by LED lamps and mounted over a new medium density overlay panel board. A double face blade sign will be mounted to the right of the Pinkberry logo and will also be illuminated by LED lamps. Additionally, the address “265” will be painted on the existing substrate above the apartment entry to differentiate the residential entry from the commercial storefront.



263 Elm Street: Future site of Pinkberry frozen yogurt parlor

3. Nature of Application:

Use: To establish the use of a fast order food establishment with operations conducted entirely within an enclosed building in a CBD zoning district requires a Special Permit with Design Review under the Somerville Zoning Ordinance (SZO) §7.11.10.2.1.a.

Alteration to the Structure: Under SZO §4.4.1, lawfully existing nonconforming structures other than one- and two-family dwellings may be enlarged, extended, renovated or altered only by Special Permit. The subject building is currently nonconforming with regard to ground coverage, rear yard setback and off-street parking. Due to the nonconforming status of the parcel, a Special Permit is required to alter this commercial space.

Parking: The parking requirement for a restaurant or food service use with seating is either based upon the gross floor area of the proposed establishment or the number of seats and employees, whichever produces a greater parking calculation. The parking requirement for the proposed yogurt parlor is greater when based upon the gross floor area. Since the gross floor area requires 1 parking space per 110 gross square feet, 15 parking spaces are required after a 20% reduction due to proximity to a rapid transit station. As the previous office use required three parking spaces and Section 9.4 of the SZO allows for a reduction in the parking requirement for nonconforming lots with no change in floor area, the number of spaces required for the previous use is deducted from the spaces required for the new use and, since more than two spaces would be required, the Applicant need only provide 50% of the additional requirement. Therefore, the resulting requirement is for six (6) additional parking spaces.

The Applicant also requests a Special Permit under SZO §9.13.a to reduce the number of required off-street parking spaces. Under §9.13.a, the SPGA may grant a Special Permit to modify certain parking standards of Article 9, “where the total number of parking spaces required by the Ordinance is six (6) or fewer, the requirements for lots or sites that are nonconforming with respect to parking as specified in Section 9.4 may be modified.”

4. Surrounding Neighborhood: The subject parcel is located in a Central Business District (CBD) in the heart of Davis Square, approximately 475 feet from the Davis Square Red Line Station. This Square is a vibrant mix of restaurant, retail, office and commercial uses and the majority of these establishments do not provide off-street parking. The neighborhood surrounding the Square is predominantly residential and is composed of a variety of dwelling types.

5. Impacts of Proposal: The Pinkberry yogurt parlor, a fast order food establishment, is not anticipated to have a negative impact on the Davis Square area nor the surrounding neighborhood. Davis Square has a large amount of pedestrian activity and the addition of another yogurt parlor will not increase traffic as patrons often frequent this type of establishment as a secondary trip. Vehicular trips generated by the proposed yogurt parlor would be offset by the proximity of the establishment to alternate modes of transportation such as the Red Line and bus services as well as multiple public parking lots. This type of business helps maintain interactions between pedestrians and the streetscape which is beneficial to Davis Square and the surrounding neighborhood.

The proposed alterations to the storefront will enhance this portion of the façade and the signage is compatible with the existing architectural design of the building. The standard 24” Pinkberry logo and blade sign will be internally illuminated by LED lamps and mounted over a new medium density overlay panel board.

6. Green Building Practices: The Applicant proposes to use LED lamps to illuminate the signage.
7. Comments:

Fire Prevention: Has been contacted but has not yet provided comments.

Ward Alderman: Alderman Gewirtz states in an email to Staff (10/2/2012) that she is not opposed to the application, but did note the number of yogurt parlors recently established in Davis Square.

Traffic & Parking: Has been contacted and requested a Traffic Memorandum concerning the parking impacts on the Davis Square neighborhood as a result of this proposal. Fort Hill Infrastructure Services submitted a thorough and well prepared Parking Memorandum which concludes that the proposed parking relief will likely have a minimal impact on the public parking supply of the surrounding neighborhood. The Department of Traffic and Parking does not fully support this assertion and notes that due to a lack in fulfilling the six required off-street parking spaces, there will be a minor increase in the traffic congestion and vehicle delay in this location of Davis Square. There will also be a slight decrease in pedestrian and bicycle safety as well as a lower turnover rate for parking spaces.

To encourage appropriate turnover rates, reduce parking in the residential neighborhood, and to promote a safe comprehensive transportation network, the Department of Traffic and Parking requires the Applicant to purchase and deliver to the City six (6) single space parking meters capable of accepting coins, credit cards and pay by phone technology. The parking meters should be manufactured by the IPS Group or an approved equal. Specifications for parking meter requirements can be supplied by the Department of Traffic and Parking if required and necessary.

II. FINDINGS FOR SPECIAL PERMIT WITH DESIGN REVIEW (SZO §7.11.10.2.1.a, §4.4.1, and §9.13.a):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied: The Staff find that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.
2. Compliance with Standards: The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."

In considering a special permit under §4.4 of the SZO, Staff find that the proposed use and alterations to the façade and interior space would not be substantially more detrimental to the neighborhood than the existing use or structure. A yogurt parlor will fit appropriately within the existing fabric of Davis Square and activate this particular storefront. The establishment would have up to four employees present at a time and the proposed hours of operation would be Sunday through Thursday, 8 a.m. to 11 p.m., and Friday and Saturday, 8 a.m. to midnight. The proposed changes to the façade of the building will be an improvement as both the commercial and residential entries will be refurbished and renovations to the storefront will include the installation of operable café windows to the right of the door with two decorative metal panels below, bullnose lintels above the windows and doors, and a façade of smooth stone veneer. These changes will help sustain the vibrancy of the streetscape and the high quality pedestrian environment of Davis Square.

In considering a Special Permit under §9.13 of the SZO the Applicant must be able to demonstrate that granting the requested special permit would not cause detriment to the surrounding neighborhood through any of the criteria as set forth under SZO §9.13, which are as follows:

- 1) increase in traffic volumes;
- 2) increased traffic congestion or queuing of vehicles;
- 3) change in the type(s) of traffic;
- 4) change in traffic patterns and access to the site;
- 5) reduction in on-street parking; or
- 6) unsafe conflict of motor vehicle and pedestrian traffic.

Fort Hill Infrastructure Services thoroughly explains that requesting relief for six (6) parking spaces for this type of use at the proposed site will have a minimal impact on the surrounding neighborhood, in regard to the above criteria. Patrons who frequent this type of establishment often do so as a secondary trip and generally walk or take public transportation. However, upon driving to this location, parking can be located either on-street or in municipal lots surrounding the Square.

The Department of Traffic and Parking does not fully support the assertion made by Fort Hill and notes that due to a lack in fulfilling the six required off-street parking spaces, there will be a minor increase in the traffic congestion and vehicle delay in this location of Davis Square. To encourage appropriate turnover rates, reduce parking in the residential neighborhood, and to promote a safe comprehensive transportation network, the Department of Traffic and Parking require that the Applicant purchase and deliver to the City six (6) single space parking meters.

3. Consistency with Purposes: The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to "providing for and maintaining the uniquely integrated structure of uses in the City; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality."

The proposal is consistent with the purpose of the Central Business District, SZO §6.1.5, which is, "[t]o preserve and enhance central business areas for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale in those areas. A primary goal for these districts is to provide environments that are safe for and conducive to a high volume of pedestrian traffic with a strong connection to retail and pedestrian accessible street level uses."

4. Site and Area Compatibility: The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."

The proposal is designed to be compatible with the characteristics of the surrounding area and is consistent with the district standards and guidelines for developments within the CBD as laid out in SZO §6.1.5, which are as follows:

1. *Across the primary street edge, the building should complete the streetwall.*

The existing building completes the streetwall along Elm Street. The Applicant does not propose to alter the streetwall as part of this proposal, but does propose to refurbish and improve the existing commercial storefront.

2. *At the street level, provide continuous storefronts or a pedestrian arcade which shall house either retail occupancies, or service occupancies suitably designed for present or future retail use.*

The proposed changes to the façade of the building maintain a continuous storefront along Elm Street. The proposed yogurt establishment will replace an office use which is not as pedestrian oriented as the proposed use. The proposal will enhance and activate the existing storefront, which will help maintain an interactive sidewalk and a pedestrian friendly environment.

3. *Massing of the building should include articulation which will blend the building in with the surrounding district. At the fourth floor, a minimum five-foot deep setback is recommended.*

The proposal does not include changes to the massing of the building. The proposed changes to the structure will enhance the pedestrian environment by activating the commercial storefront and refurbishing the façade.

4. *Locate on-site, off-street parking either at the rear of the lot behind the building or below street level; parking should not abut the street edge of the parcel.*

There are no changes proposed to the existing parking situation at the site. The Applicant requests relief under SZO §9.13.a for six (6) parking spaces.

5. *Provide access to on-site, off-street parking from either a side street or alley. Where this is not possible, provide vehicular access through an opening in the street level facade of the building of a maximum twenty-five (25) feet in width.*

The Applicant does not propose changes to the existing parking situation at this site.

The proposal is also designed to be compatible with the characteristics of the surrounding area and is consistent with the design guidelines for a business zone as laid out in SZO §5.1.5.A as follows:

1. *Maintain a strong building presence along the primary street edge, continuing the established streetwall across the front of the site so as to retain the streetscape continuity; however, yards and setbacks as required by Article 8 shall be maintained.*

The existing building completes the streetwall along Elm Street. The Applicant does not propose to alter the streetwall as part of this proposal, but does propose to refurbish and improve the existing commercial storefront. There are no yards or setbacks that will be altered as part of this proposal.

2. *Differentiate building entrances from the rest of the primary street elevation, preferably by recessing the entry from the plane of the streetwall or by some other articulation of the elevation entrance.*

The Applicant does not propose to alter the existing entrance to the commercial space or to the residential units above. The existing door to the subject commercial space is slightly recessed and is currently ADA accessible from the Elm Street streetscape. The Applicant proposes to refurbish these

entries and improve the commercial façade through the installation of operable café windows to the right of the door with two decorative metal panels below, bullnose lintels above the windows and doors, and a façade of smooth stone veneer.

3. *Make use of the typical bay widths, rhythms and dimensions prevalent in buildings adjacent to the site, especially in new construction or substantial redevelopment.*

The Applicant will maintain the typical bay width, rhythm, and dimensions of the storefront in the existing building. The physical composition of the storefront will be improved which will enhance the streetscape of Elm Street. Entries to the storefront and residential units above will be refurbished, but not altered. Renovations to the storefront will include the installation of operable café windows to the right of the door with two decorative metal panels below, bullnose lintels above the windows and doors, and a smooth stone veneer façade. Signage for the yogurt parlor, Pinkberry, will include a 1" x 1" green aluminum trellis with the Pinkberry logo and a double face blade sign for a total of 49 square feet. Additionally, the address "265" will be painted on the existing substrate above the apartment entry to differentiate the residential entry from the commercial storefront.

4. *Clearly define these bay widths, rhythms and dimensions, making them understandable through material patterns, articulations and modulations of the façades, mullion design and treatment, etc.*

As a part of this proposal, the Applicant will maintain the typical bay width, rhythm, and dimensions of the storefront in the existing building. The width and rhythm of the bays will be more clearly defined through the installation of operable windows and a new stone veneer façade. The existing commercial entry is slightly recessed from the sidewalk along Elm Street, separating it from the pedestrian way, and the Applicant does not propose to change this element of the façade.

5. *Provide roof types and slopes similar to those of existing buildings in the area.*

The Applicant does not propose to change the roof type or slope on the existing building as part of this proposal.

6. *Use materials and colors consistent with those dominant in the area or, in the case of a rehabilitation or addition, consistent with the architectural style and period of the existing building. Use of masonry is encouraged, but not considered mandatory.*

Renovations to the storefront include materials and colors consistent with those dominant in the area such as the proposed stone veneer. The installation of operable café windows to the right of the door with two decorative metal panels below and bullnose lintels above the windows and doors are consistent with the architectural style and period of the existing building. Signage has been modified to comply with SZO standards and while the colors of the signage represent a more modern era, the signage itself is compatible with the surrounding area and improves the streetscape.

7. *When parking lots are provided between buildings, abutting the primary street and breaking the streetwall, provide a strong design element to continue the streetwall definition across the site, such as a low brick wall, iron works or railing, trees, etc.*

There is currently no on-site parking for the existing building and the Applicant does not propose to change the existing parking situation. The existing building, which consumes a majority of the parcel,

will be maintained as will the strong presence of the subject building along Elm Street. The Applicant requests relief under SZO §9.13.a for six (6) parking spaces.

8. *Locate transformers, heating and cooling systems, antennae, and the like, so they are not visible from the street; this may be accomplished, for example, by placing them behind the building, within enclosures, behind screening, etc.*

Existing HVAC equipment, located at the rear of the unit above the single story roof, will be demolished and replaced in a location further back from the edge of the building, but still above the single story roof. Screening of the equipment will include vertical wood slats approximately 3” apart.

9. *Sites and buildings should comply with any guidelines set forth in Article 6 of this Ordinance for the specific base or overlay zoning district(s) the site is located within.*

The proposal is consistent with the guidelines set forth for developments within a Central Business District, as laid out in SZO §6.1.5. Please refer to the above detailed responses with regard to this design guideline.

5. Adverse environmental impacts: The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.

No adverse environmental impacts are anticipated as a result of this proposal. No new noise, glare, smoke, vibration, nor emissions of noxious materials, nor pollution of water ways or ground water, nor transmission of signals that interfere with radio or television reception are anticipated as part of the proposal. The signage will be illuminated internally by LED lamps and will have a minimal impact on the surrounding area.

6. Vehicular and pedestrian circulation: The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.

The Applicant proposes not to alter the existing parking situation at this site. The Applicant requests a Special Permit under SZO §9.13.a to reduce the number of required off-street parking spaces. Under §9.13.a, the SPGA may grant a Special Permit to modify certain parking standards of Article 9, “where the total number of parking spaces required by the Ordinance is six (6) or fewer, the requirements for lots or sites that are nonconforming with respect to parking as specified in Section 9.4 may be modified.” Therefore, the Applicant requests relief of the resulting requirement for six (6) additional parking spaces.

The Parking Memorandum submitted as part of this Special Permit application by Fort Hill Infrastructure Services, LLC indicated that the impact of the proposed project on the Davis Square parking supply is likely to be minimal. The memorandum strongly encourages the Applicant to consider offering discounted MBTA passes to employees, to participate in the City’s employee parking program, and to make customers fully aware of the public transportation options available to them, especially through the use of Pinkberry’s website. The Parking Memorandum also states how the proposed use of the space, a yogurt parlor, generates secondary trips in that patrons of the proposed establishment will have already visited another establishment in Davis Square. Trips generated by the yogurt parlor will be offset by the

proximity of the storefront to alternate modes of transportation (Red Line, bus services, taxis, Tufts Shuttle Bus, Community Path, etc.) and the multiple public parking lots located within 500 feet of the proposed establishment. These factors will help minimize impacts of the parking needs for the proposed yogurt parlor.

7. Fast food establishments: In special permit applications for fast-order, take-out or automobile oriented food service establishments, there shall be establishment of a need for such a facility in the neighborhood or in the City, and impacts on traffic circulation, parking and visual, physical, or historical characteristics of the particular location shall not be detrimental.

The proposal is designed to be compatible with the characteristics of the surrounding area and is consistent with the district standards and guidelines for developments within the CBD as laid out in SZO §6.1.5, and with the design guidelines for a business zone as laid out in SZO §5.1.5.A. Findings regarding the consistency of the proposal with these elements of the SZO can be found in Part II, Section 4 of this report. The establishment of this proposed yogurt parlor would help maintain the vibrancy of the streetscape and the high quality pedestrian environment of Davis Square, which is a benefit to the surrounding neighborhood.

As previously mentioned, the Department of Traffic and Parking does not fully support the opinion of Fort Hill and notes that relief from the requested parking spaces will minimally increase traffic congestion and vehicle delay in this location of the Square. Additionally, a slight decrease in pedestrian and bicycle safety as well as a lower turnover rate for parking spaces will also result from the establishment of Pinkberry. Aside from these noted impacts, negative effects are not anticipated from the proposed parking relief. To alleviate these concerns and to encourage appropriate turnover parking turnover rates, the Applicant is required to purchase and deliver to the City six (6) single-space parking meters capable of accepting coins, credit cards and pay-by-cell phone technology.

III. RECOMMENDATION

Special Permit with Design Review under §7.11.10.2.1.a, §4.4.1 and §9.13.a

Based on the materials submitted by the Applicant, the above findings and subject to the following conditions, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMIT**.

The recommendation is based upon a technical analysis by Planning Staff of the application material based upon the required findings of the Somerville Zoning Ordinance, and is based only upon information submitted prior to the public hearing. This report may be revised or updated with new recommendations, findings and/or conditions based upon additional information provided to the Planning Staff during the public hearing process.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes										
1	<p>Approval is for a Special Permit with Design Review under SZO §7.11.10.2.1.a to establish a fast order food establishment (frozen yogurt parlor), a Special Permit under SZO §4.4.1 to modify the existing storefront, including window openings, and a Special Permit under SZO §9.13.a for relief from parking requirements. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>(September 18, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>September 14, 2012 (October 11, 2012)</td> <td>Existing and proposed plot plans submitted to OSPCD</td> </tr> <tr> <td>(October 11, 2012)</td> <td>Elevation and Perspective renderings submitted to OSPCD</td> </tr> <tr> <td>October 4, 2012 (October 11, 2012)</td> <td>Pinkberry Fit-Out Plans submitted to OSPCD (Cover, A-1, A-1A, A-2, A-2A, A-3, A-3A, & A-4)</td> </tr> </tbody> </table> <p>Any changes to the approved site plan, elevation or use that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(September 18, 2012)	Initial application submitted to the City Clerk's Office	September 14, 2012 (October 11, 2012)	Existing and proposed plot plans submitted to OSPCD	(October 11, 2012)	Elevation and Perspective renderings submitted to OSPCD	October 4, 2012 (October 11, 2012)	Pinkberry Fit-Out Plans submitted to OSPCD (Cover, A-1, A-1A, A-2, A-2A, A-3, A-3A, & A-4)	BP/CO	ISD/Plng.	
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2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP											
3	Signage for Pinkberry shall be installed according to the plans. The aluminum trellis is includes as part of the signage.	CO	ISD/Plng.											

4	The Applicant shall purchase and deliver to the City six (6) single space parking meters capable of accepting coins, credit cards, and pay by phone technology. The parking meters should be manufactured by the IPS Group or an approved equal. Specifications for all requirements of the parking meters can be supplied by the Department of Traffic and Parking if required and necessary.	CO	T&P	
5	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW	
6	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	



263 Elm Street, a/k/a 5 Davis Square